

# BakerHostetler

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March 15, 2019

### VIA ECF AND E-MAIL

The Honorable Stuart M. Bernstein  
United States Bankruptcy Court  
Southern District of New York  
One Bowling Green  
New York, New York 10004

*Re: Picardv. Sonja Kohn, et al.; Adv. Pro. No. 10-05411 (SMB)*

Dear Judge Bernstein:

We represent Irving H. Picard, the Trustee in the above matter. We write to update the Court on the status of the case, and to convey the parties' joint request for a revised briefing schedule.

The Trustee has been working on an updated proposed third amended complaint, which significantly reduces the amount sought from the defendants. As previously discussed with counsel for the defendants, it was the Trustee's intention to circulate the revised draft to the defendants for their review prior to the court conference that is scheduled for March 27, 2019. At that conference, the Trustee intended to request from the Court a reasonable time for the defendants to review the updated proposed complaint to determine whether they would consent to the substitution of the updated complaint, and whether they will consent to the amendment or whether they intend to oppose it.

Ms. Sonja Kohn is also tangentially involved in the Trustee's action involving HSBC, in which significant work has been done concerning the Trustee's claims against other parties. During a conversation held with counsel for Ms. Kohn prior to Wednesday's Court decision on the parties' request for an extension of time, the parties had discussed potentially common interests, and how those interests could possibly assist in resolving claims in the Kohn action. It was also previously discussed with counsel for the defendants that upon review of the Trustee's updated proposed amended complaint, the parties may wish to re-start a prior mediation that was held with Judge Melanie Cyganowski (Ret.).

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We appreciate the Court's wish to not delay this case. We regret any misunderstanding as to the requested extension of time, as our intention was to advise the Court of the foregoing information at the scheduled conference on March 27. The extension request was merely intended to carry the parties through that conference date, and to seek the Court's further guidance at that time.

Mindful of the Court's comments and denial of the extension, and in light of the additional information we have provided in this letter, the parties jointly propose, and respectfully request, that the Court consider the following revised briefing schedule:

March 27, 2019 - Circulation of the Trustee's updated proposed amended complaint to the defendants

April 12, 2019 - Date by which defendants shall file their opposition to the Trustee's motion to authorize the proposed amended complaint (as updated), or in the alternative to advise the Court and the Trustee of the defendants' consent to the amendment.

April 29, 2019-Date for Trustee's reply to defendants' objection (if any) to the proposed amended complaint

May 29, 2019 - 10:00am Hearing on Trustee's motion to authorize proposed amended complaint (if necessary)

Respectfully,

*Isl Keith R. Murphy*

Keith R. Murphy

cc: Isaac M. Neuberger, Esq.  
Steven W. Rhodes, Esq.  
Oren J. Warshavsky, Esq.

#### **MEMORANDUM ENDORSEMENT AND ORDER**

Kohn has had more than four years to consent or object to the Trustee's request for leave to file an amended complaint, and furthermore, the Court has never been led to believe that Kohn's objection, if any, to the filing of an amended complaint was based on the amount sought in the *ad damnum*. The recent negotiations between the parties seem to have been spurred by the Court's refusal to grant any more adjournments. Finally, the parties are free to engage in mediation, but given the length of time this matter has been pending, mediation will not delay the trial.

Dated: New York, New York  
March 18, 2019

/s/ *Stuart M. Bernstein*  
STUART M. BERNSTEIN  
United States Bankruptcy Judge